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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,786	12/15/2000	Kevin McCombe	40101/01101	3798

30636 7590 01/29/2007
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EXAMINER

BAROT, BHARAT

ART UNIT	PAPER NUMBER
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2155

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	01/29/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/738,786

Filing Date: December 15, 2000

Appellant(s): MCCOMBE ET AL.

Michael J. Marcin
(Registration No. 48,198)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on November 01, 2006 appealing from the
Office Action (Final Rejection) mailed on June 08, 2006.

REAL PARTY IN INTEREST

1. The statement identifying the real party in interest is contained in the appeal brief.

RELATED APPEALS AND INTERFERENCES

2. The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF THE CLAIMS

3. The statement of the status of claims contained in the appeal brief is correct.

STATUS OF AMENDMENT

4. The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

SUMMARY OF CLAIMED SUBJECT MATTER

5. The summary of claimed subject matter contained in the appeal brief is correct.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

6. The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

CLAIMS APPENDIX

7. The copy of the appealed claims contained in the Appendix to the appeal brief is correct.

EVIDENCE RELIED UPON

8. No evidence is relied upon by the examiner in the rejection of the claims under appeal.

PRIOR ART OF RECORD

9. a. US Patent No. 6,470,346, published on October 22, 2002, filed on October 07, 1998 by Morwood.
b. US Patent No. 6,385,637, published on May 07, 2002, filed on August 21, 1997 by Peters et al.

GROUND OF REJECTION

10. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morwood (U.S. Patent No. 6,470,346) in view of Peters et al (U.S. Patent No. 6,385,637).

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CLAIM REJECTIONS - 35 USC § 103(a)

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morwood (U.S. Patent No. 6,470,346) in view of Peters et al (U.S. Patent No. 6,385,637).

13. As to claim 1, Morwood discloses a system for managing a plurality of client processes (see abstract; figures 1-2; and column 2 lines 33-67), comprising: a client task within which the client processes will be executed (column 1 lines 50-63; column 2 lines 33-67; and column 14 line 64 to column 15 line 52); and a manager task running at a higher priority than the client task, the manager task queuing the client processes into the client task in priority order (figures 2-3; column 4 lines 15-22; and column 8 line 16 to column 9 line 28).

In addition, Morwood discloses that the manager task kills the client task based on task (process) priority and by maintaining the task (process) queues i.e. waiting,

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running, completed, aborted, and removed (figures 2-3; column 8 lines 41-48; and column 9 lines 4-21). However, Morwood does not explicitly disclose that killing the client task is not based on a current one of the client processes not being completed within a predetermined time period.

Peters et al explicitly discloses that the suspending (killing) a client task when the client processes is not completed within a predetermined time period (see abstract; figure 2; column 1 lines 32-53; column 7 line 57 to column 8 line 8; column 8 lines 42-60; column 9 lines 5-26; and column 10 line 50 to column 11 line 16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Peters et al as stated above for killing the client task when the client processes is not completed within a predetermined time period with the system of Morwood for managing a plurality of client processes because it would have provided a novel timing method and apparatus to manage the plurality of client processes and control network communication traffic, maximized network latency, and reduced or eliminated time delay.

14. As to claims 2-3, Morwood discloses that the manager task restarts the client task and queues a next one of the client processes into the client task or requeues the current client process into the client task (figures 3, 11, and 14; column 9 lines 9-21; column 12 lines 16-37; and column 13 lines 24-47).

15. As to claims 4-5, Morwood disclose that the client task sends a response to the manager task indicating the execution of the current client process is complete; and the manager task, when receiving the response from the client task, queues a next one of the client processes into the client task (column 9 lines 4-21; column 10 lines 51-64; and column 12 lines 6-37).

16. As to claims 6-10, they are also rejected for the same reasons set forth to rejecting claims 1-5 above, since claims 6-10 are merely a method of operation for the apparatus defined in the claims 1-5.

17. As to claim 11, it is also rejected for the same reasons set forth to rejecting claim 1 above, since claim 11 is merely a computer-readable storage medium storing a set of instructions to manage the apparatus defined in the claim 1 and perform the method of operations defined in the claim 6.

RESPONSE TO ARGUMENTS

18. The examiner summarizes the various points raised by the appellant and addresses them individually.

19. As per appellants' arguments filed on November 01, 2006, appellants argued in substance that:

20. **Arguments:** The rejection of claims 1-11 under 35 U.S.C. 103(a) as being unpatentable over Morwood (U.S. Patent No. 6,470,346) in view of Peters et al (U.S. Patent No. 6,385,637) should be reversed **and** the cited patents do not disclose that the manager task kills the client task when a current one of the client process is not completed within a predetermined time period as recited in claim 1.

21. **Responses:** The argument toward rejection of claims 1-11 under 35 U.S.C. 103(a) is not persuasive and rejection stands.

Morwood explicitly discloses a system for managing a plurality of client processes (figure 2), a manager process queuing the client processes into a plurality of queues by using priority level, and also discloses a manager task kills the client task based on task (process) priority and by generating aborted and removed queues (figures 2-3; column 8 lines 41-48; and column 9 lines 4-21).

However, Morwood does not explicitly disclose that killing the client task is not based on a current one of the client processes not being completed within a predetermined time period.

Peters et al explicitly discloses that a supervisory computer terminal suspending (killing) a client task when the client processes is not completed within a predetermined time period (see abstract; figure 2; column 1 lines 32-53; column 7 line 57 to column 8 line 8; column 8 lines 42-60; column 9 lines 5-26; and column 10 line 50 to column 11 line 16); therefore, the combination of Morwood and Peters et al explicitly discloses or suggests the claimed limitations of the claim 1.

It appear that the examiner did not clearly set forth in the Final Rejection that Peters et al is only being relied upon for the teaching of "suspending (killing) a client task when the client processes is not completed within a predetermined time period" as set forth above, the rejection now clearly indicates that the Morwood is relied upon for the limitation of "killing the client task..." The combination of Morwood and Peters et al explicitly teaches the claimed limitations recited in claim 1. Accordingly, appellant's arguments that Peters et al fails to disclose this limitation are moot.

RELATED PROCEEDING(S) APENDIX

22. No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.
23. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

Bharat Barot
BHARAT BAROT
PRIMARY EXAMINER

Patent Examiner Bharat Barot
Art Unit 2155
January 18, 2007

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